IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 17137 of 2007(M)

AGAINST THE ORDER IN IA. 1077 /2005 IN OS.17/2002 of SUB COURT, OTTAPPALAM
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PETITIONER:
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usman, AGED 53 YEARS, S/O KODEIL DECEASED ALIKUTTY, RESIDING AT MUTHUTHALA AMSOM AND DESOM, OTTAPPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

RESPONDENTS:
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1. **IBRAHIM S/O KODELIL DECEASED MOOSA.**
2. **MUHAMMED ALI, S/O DO.**
3. **MARIYAKUTTY, D/O DO.**
4. **NABEESA, D/O DO.**
5. **SUBIDA(INSANE) D/O DO. (GUARDIAN 2ND RESPONDENT MUHAMMED ALI)**
6. **PATHUMMA D/O KODALIL DECEASED KUHIRAYAN.**

ALL RESIDING AT MUTHUTHALA AMSOM AND DESOM, OTTAPPALAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 17137 OF 2007

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Dated this the 5th day of June, 2007.

J U D G M E N T

This writ petition is preferred against the order in I.A.1077/05. I.A.1077/05 is filed by the 31st defendant to direct the 19th defendant to appear before Court and give the specimen signature and thumb impression and thereafter send it along with document No.25/1962 to the Director, Finger Print Bureau, Thiruvananthapuram in order to find out whether the 19th defendant had affixed her thumb impression or signature in document No.25/1962. Against this petition, the 2nd plaintiff filed a counter statement. What is stated in the counter statement is "..... ...." and therefore there need not be any comparison of the signature.

2. The learned Subordinate Judge in the order negatived the prayer of 31st defendant on the ground that in the counter execution of the document in question is not denied. Case of the plaintiff through out had been that there is no document such as

document No.25/1962 and they have not executed the said surrender deed and therefore the right of the plaintiff is not lost by execution of such a document. In the counter statement also it is categorically stated that the execution of the document is not there. Therefore, the order passed by the learned Subordinate Judge suffers from legal infirmity and it is illegal. It is averred in the petition that the witnesses are not alive and the only method to prove the execution of the document is by comparison of the thumb impression and signature and therefore for a proper disposal of the matter it is desirable to get opinion of the expert.

Since the order suffers from total illegality I am not inclined to issue notice to the other side. Therefore, the writ petition is allowed. The order under challenge is set aside and the prayer in I.A.1077/05 is allowed. It is made clear that it is for the writ petitioner to spend the amount that has to be incurred for the purpose of sending the document for comparison of the signature. Since it is submitted that the age of the 19th defendant is about 89, the trial court shall see that expeditious steps are taken to collect her signature and thumb impression as prayed in I.A. and then address the Forensic Laboratory for comparison.

M.N. KRISHNAN, JUDGE.

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